

FILED

JAN 10 2006

**RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA**

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**SL SERVICE, INC., a Delaware corporation, and
LUMBERMEN'S MUTUAL CASUALTY
COMPANY, an Illinois corporation,**

Plaintiffs,

vs.

**PACIFIC EMPLOYERS INSURANCE
COMPANY, a Pennsylvania corporation,**

Defendant.

No. C05 01512 MJJ 1

**STIPULATION FOR PROTECTIVE
ORDER AND PROTECTIVE ORDER**

The parties, through their respective attorneys, hereby stipulate to the entry of the following Protective Order in the above captioned matter and request that the Court enter its Order thereon:

To expedite the flow of discovery material, facilitate the prompt resolution of disputes over confidentiality, protect adequately material entitled to be kept confidential, and ensure that protection is afforded only to material so entitled, pursuant to the court's authority under the Federal Rules of Civil Procedure and with the consent and agreement of the parties, it is ordered:

I. NONDISCLOSURE OF CONFIDENTIAL DOCUMENTS. EXCEPT WITH THE PRIOR WRITTEN CONSENT OF THE PARTY DESIGNATING A DOCUMENT AS A CONFIDENTIAL DOCUMENT, OR AS HEREINAFTER PROVIDED, NO CONFIDENTIAL DOCUMENT MAY BE DISCLOSED TO ANY PERSON. THE

1 DESIGNATION OF CONFIDENTIALITY MAY BE MADE BY LETTER BETWEEN
2 COUNSEL. COUNSEL SHALL ONLY DESIGNATE INFORMATION CONFIDENTIAL
3 THAT IS SUBJECT TO PROTECTION UNDER FRCP RULE 26(c). NO SUCH
4 DESIGNATION MAY BE MADE WITHOUT A GOOD FAITH DETERMINATION BY
5 COUNSEL THAT SUCH PROTECTION IS WARRANTED.

6 For purposes of this order, the term "confidential document" means all written,
7 recorded, or graphic material, or thing whether produced or created by a party or
8 another person, whether produced pursuant to Rules 26 and 34, subpoena, by
9 agreement, or otherwise, interrogatory answers, responses to requests for
10 admission, deposition transcripts and exhibits.

11 II. PERMISSIBLE DISCLOSURES. Notwithstanding paragraph I, confidential documents may
12 be disclosed to party employees involved in the management of this litigation and to insurers
13 and reinsurers of the parties; to counsel for the parties in this action who are actively engaged
14 in the conduct of this litigation; to the partners, associates, secretaries, paralegal, assistants,
15 and employees of such counsel to the extent reasonably necessary to render professional
16 services in the litigation; to persons with prior knowledge of the documents or the confidential
17 information contained therein, and their agents; to court officials involved in this litigation
18 (including court reporters, persons operating video recording equipment at depositions, and
19 any special master appointed by the court. Such documents may also be disclosed:

- 20 A. to any person designated by the court in the interest of justice, upon such terms as the
21 court may deem proper;
- 22 B. to persons noticed for depositions or deposed by agreement, or designated as witnesses
23 to the extent reasonably necessary to testify or otherwise provide evidence;
- 24 C. to outside consultants or experts retained for the purpose of assisting counsel in the
25 litigation; to employees of parties involved solely in one or more aspects of
26 organizing, filing, coding, converting, storing, or retrieving data or designing
27 programs for handling data connected with these actions, including the performance of
28 such duties in relation to a computerized litigation support system; and to employees

1 of third-party contractors performing one or more of these functions; provided,
2 however, that in all such cases the individual to whom disclosure is to be made has
3 been advised of this Agreement and of the confidentiality of the information or
4 document and agree that disclosures will not be made by them and the information
5 will not be kept by them as set forth in Agreement to Abide by Stipulated Protective
6 Order (Attachment A)

7 III. DECLASSIFICATION. A party (or aggrieved entity permitted by the court to intervene for
8 such purpose) may, for reasonable cause, apply for a ruling that a document (or category of
9 documents) is not entitled to such status and protection. The party or other person that
10 originally designated the document as confidential, shall be given notice of the application
11 and a reasonable opportunity to respond. Upon a showing of reasonable cause to declassify,
12 the proponent of confidentiality must show by a preponderance of the evidence that there is
13 good cause for the document to have such protection.

14 IV. CONFIDENTIAL INFORMATION IN DEPOSITIONS. A deponent may, during the
15 deposition be shown and examined about confidential documents, but should be prevented
16 from removing them from the deposition. Documents retain their confidential status when
17 attached to a deposition. Within 20 days of entry of this order or the receipt of a deposition,
18 whichever is later, a party may designate a portion of any deposition confidential by page and
19 line number, the remainder of the deposition will not be protected under this order.

20 V. CONFIDENTIAL INFORMATION AT TRIAL. Subject to the federal rules of evidence,
21 confidential documents and other confidential information may be offered in evidence at trial
22 or any court hearing, provided that the proponent of the evidence gives five days' advance
23 notice to counsel for any party that designated the information as confidential. Any party may
24 move the court for an order that the evidence be received in camera or under other conditions
25 to prevent unnecessary disclosure. The court will then determine whether the proffered
26 evidence should continue to be treated as confidential information and, if so, what protection,
27 if any, may be afforded to such information at the trial.
28

- 1 VI. SUBPOENA. If another party subpoenas or orders production of confidential documents that
2 party has obtained under the terms of this order, such party shall promptly notify the party
3 who designated the document as confidential of the pendency of such subpoena or order.
- 4 VII. FILING. Confidential documents may be filed with the court under seal. In addition to
5 placing documents in a sealed envelope with instructions that the document is filed pursuant
6 to this stipulated protective order and that the envelope should not be opened absent further
7 order of the court, the envelope should be labeled to identify the title of the case, the case
8 number, and the title of the document.
- 9 VIII. CLIENT CONSULTATION. Nothing in this order shall prevent or otherwise restrict counsel
10 from rendering advice to their clients.
- 11 IX. USE. Parties and persons obtaining access to confidential documents under this order shall
12 use the information only for preparation and trial of this litigation, for internal reporting, and
13 reporting to insurers or re-insurers in connection, therewith, and shall not use such
14 information for any other purpose, including business, governmental, commercial,
15 administrative, or judicial proceedings.
- 16 X. MODIFICATION PERMITTED. Nothing In This Order Shall Prevent Any Party Or Other
17 Person From Seeking Modification Of This Or From Objecting To Discovery That It Believes
18 To Be Otherwise Improper.
- 19 XI. RESPONSIBILITY OF ATTORNEYS. The attorneys of record are responsible for
20 employing reasonable measures, consistent with this order, to control duplication of, access
21 to, and distribution of copies of confidential documents.
- 22 XII. NO WAIVER
- 23 A. Review of the confidential documents and information by counsel, experts, or
24 consultants for the litigants in the litigation shall not waive the confidentiality of the
25 documents or objections to production.
- 26 B. The inadvertent, unintentional, or *in camera* disclosure of confidential document and
27 information shall not, under any circumstances, be deemed a waiver, in whole or in
28 part, of any party's claims of confidentiality or privilege.

1 XIII. EXPIRATION - The court's jurisdiction to enforce this order shall expire six months after
2 termination of this action.

3 XIV. NOTHING CONTAINED IN THIS PROTECTIVE ORDER AND NO ACTION TAKEN
4 PURSUANT TO IT SHALL PREJUDICE THE RIGHT OF ANY PARTY TO CONTEST
5 THE ALLEGED RELEVANCY, ADMISSIBILITY, OR DISCOVERABILITY OF ANY
6 EVIDENCE INCLUDING ANY CONFIDENTIAL DOCUMENTS AND INFORMATION.
7 THIS STIPULATION AND ORDER SHALL NOT ACT TO WAIVE, WITHDRAW OR
8 OTHERWISE AFFECT ANY PREVIOUSLY ASSERTED OR FUTURE CLAIM OF
9 ATTORNEY CLIENT PRIVILEGE OR WORK PRODUCT PROTECTION OR OTHER
10 CLAIM OF PRIVILEGE IN THIS ACTION BY THE PARTIES AS AGAINST EACH
11 OTHER OR AGAINST THIRD PARTIES, BUT CREATES A MECHANISM FOR THE
12 CONFIDENTIAL PRODUCTION AND EXCHANGE OF DOCUMENTS IN THIS
13 PROCEEDING AND PREVENTS DOCUMENT ACCESS BY AND/OR
14 DISSEMINATION TO THIRD PARTIES.

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16 SIGNED this 10 day of January, 2005-2006

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18 
19 Judge, United States District Court for the
Northern District

20 AGREED TO BY COUNSEL:

21
22 DATED: January, 2006

23
24 NIVEN & SMITH

25 By: 

26 JOHN W. BASSETT
27 Attorneys for Plaintiffs SL SERVICE, INC.
28 and LUMBERMEN'S MUTUAL
CASUALTY COMPANY

1 DATED: 1/9/06

DOWNS RACHLIN MARTIN PLLC

2
3 By: 

R. BRADFORD FAWLEY
Attorneys for Plaintiffs SL SERVICE, INC.
and LUMBERMEN'S MUTUAL
CASUALTY COMPANY

4
5 DATED: 1/9/06

NIXON PEABODY

6
7 By: 

ALAN S. FEILER
Attorneys for Defendant PACIFIC
EMPLOYERS INSURANCE COMPANY